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HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)
)
)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,)
)
Complainant,)
)
vs.)
)
HAWAIIAN DREDGING)
CONSTRUCTION COMPANY,)
)
Respondent.)
)

CASE NO. ^{OSH}~~OSAB~~ 2003-21
(Report No. 306257940)

STIPULATION AND SETTLEMENT
AGREEMENT; EXHIBIT A;
APPROVAL AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations
("Director") and Respondent HAWAIIAN DREDGING CONSTRUCTION
COMPANY ("Respondent") having reached a full and complete
settlement of the above-captioned contested case presently
pending before the Hawaii Labor Relations Board ("Board")
stipulate and agree as follows:

On or about April 14, 2003, the Director, by and through the State of Hawaii Occupational Safety and Health Division ("HIOSH"), initiated an investigation of the Respondent's workplace located at 16-714 Volcano Road, Keaau, Hawaii, 96749. The investigation arose after it was reported to HIOSH that a worker was fatally injured while he was removing a wall form. It was reported that a section of a wall form fell as it was being lifted by a crane and struck an employee. The employee was transported to Queens Hospital where he subsequently died from his injuries.

As a consequence of said investigation, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on August 13, 2003 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$6,375.00. See Exhibit A.

Respondent timely contested the Citation on August 22, 2003.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a worksite at the Kamehameha School, 16-714 Volcano Road, Keaau, Hawaii, 96749.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation is amended as follows:

a. Citation 1, item 1, alleging a serious violation of 29 CFR 1926.550(a)(19) shall remain;

b. Citation 1, item 2a, alleging a serious violation of 29 CFR 1926.703(a)(1) shall remain;

c. Citation 1, item 2b, alleging a serious violation of 29 CFR 1926.703(a)(2) shall remain;

d. Citation 1, item 3a, alleging a serious violation of Section 12-110-2(b)(2)(B), HAR, is withdrawn with prejudice;

e. Citation 1, item 3b, alleging a serious violation of Section 12-110-2(b)(3), HAR, is withdrawn with prejudice; and

f. Citation 1, item 3c, alleging a serious violation of Section 12-110-2(b)(4)(C), HAR, is withdrawn with prejudice.

5. The Director reduces the aggregate penalty from \$6,375.00 to \$5,000.00, which shall be paid in full to the Director of Budget and Finance within five (5) business days of the approval and filing of this Agreement by the Hawaii Labor Relations Board.

6. Except for the stipulated amendments described above, the Citation and Notification of Penalty of August 13, 2003 is confirmed in all other respects, and upon approval by the Labor Board, this Agreement and the Citation and Notification of Penalty of August 13, 2003, as amended, shall become a final order of the Director.

7. The Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation and Notification of Penalty of August 13, 2003, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. The Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

9. The Respondent withdraws its notice of contest dated August 22, 2003.

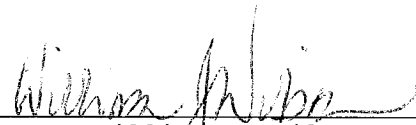
10. By entering into this Agreement, the Respondent does not admit that it violated the cited standards for any litigation or purpose other than a subsequent proceeding under the Hawaii Occupational Safety and Health Law.

11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by the Respondent that may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

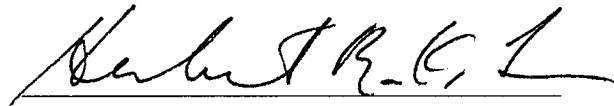
12. The Hawaii Labor Relations Board may enter an order in accordance with the foregoing stipulations.

DATED: Honolulu, Hawaii, May 21, 2004.

HAWAII DREDGING CONSTRUCTION
COMPANY, INC.

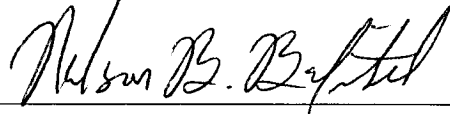

By: William J. Wilson
It's: President

APPROVED AS TO FORM:



HERBERT B.K. LAU
Deputy Attorney General

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



NELSON B. BEFITELE
Director of Labor

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 97



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA MARKRICH, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7002 2030 0003 4048 8041

Citation and Notification of Penalty

To:

Hawaiian Dredging Construction Co
and its successors
P O Box 4088
Honolulu, HI 96812

Inspection Site:
16-714 Volcano Rd
Keaau, HI 96749

Inspection Number: 306257940
Hervie Messier
Inspection Date(s): 04/14/2003- 07/17/2003
Issuance Date: 08/13/2003
OSHC ID: U5995
Optional Report No.: 09603

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Department of Labor and Industrial Relations Appeals Board or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the proposed citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the Appeals Board.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been

discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

FOR JENNIFER SHISHIDO, ADMINISTRATOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
830 PUNCHBOWL STREET
HONOLULU, HI 96813

Hawaiian Dredging Construction Co
P O Box 4088
Honolulu, HI 96812

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 08/13/2003. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 306257940

Inspection Dates: 04/14/2003 - 07/17/2003

Issuance Date: 08/13/2003



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaau, HI 96749

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.550(a)(19) [Refer to chapter 12-136.1, HAR] was violated because:

An employee was observed on four occasions walking under wall forms being lifted by a crane.

29 CFR 1926.550(a)(19) states "All employees shall be kept clear of loads about to be lifted and of suspended loads."

Location: East side of gymnasium locker room under construction

Date By Which Violation Must be Abated:
Penalty:

08/18/2003
\$ 2,125.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 306257940
Inspection Dates: 04/14/2003 - 07/17/2003
Issuance Date: 08/13/2003



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaau, HI 96749

The alleged violations below (items 2a-2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1926.703(a)(1) [Refer to chapter 12-155.1, HAR] was violated because:

There were no design plans for the fabrication, erection, support, bracing and maintenance of the rake form. This rake form was constructed on site and was the one involved in the accident event.

29 CFR 1926.703(a)(1) states "Formwork shall be designed, fabricated, erected, supported, braced and maintained so that it will be capable of supporting without failure all vertical and lateral loads that may reasonably be anticipated to be applied to the formwork. Formwork which is designed, fabricated, erected, supported, braced and maintained in conformance with the appendix to this section will be deemed to meet the requirements of this paragraph."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

08/18/2003
\$ 2,125.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 306257940
Inspection Dates: 04/14/2003 - 07/17/2003
Issuance Date: 08/13/2003



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaau, HI 96749

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1926.703(a)(2) [Refer to chapter 12-155.1, HAR] was violated because:

There were no drawings or plans for the rake form available on site.

29 CFR 1926.703(a)(2) states "Drawings or plans including all revisions for jack layout, formwork (including shoring equipment) work decks and scaffolds, shall be available at the jobsite."

Location: Jobsite

Date By Which Violation Must be Abated:

08/18/2003

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 306257940
Inspection Dates: 04/14/2003 - 07/17/2003
Issuance Date: 08/13/2003



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaaau, HI 96749

The alleged violations below (items 3a-3c) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 3a Type of Violation: **Serious**

HAR §12-110-2(b)(2)(B) was violated because:

The employer condoned an employee's unsafe behavior by failing to apply progressive discipline; i.e., employee who walked under wall forms being lifted by a crane was only verbally reprimanded on three separate occasions.

§12-110-2(b)(2)(B) states "The employer shall ensure that practices are understood by all employees and are underscored through training, positive reinforcement, correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system."

Location: East side of gymnasium locker room under construction

Date By Which Violation Must be Abated:
Penalty:

08/18/2003
\$ 2,125.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 306257940

Inspection Dates: 04/14/2003 - 07/17/2003

Issuance Date: 08/13/2003



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaau, HI 96749

Citation 1 Item 3b Type of Violation: **Serious**

HAR §12-110-2(b)(3) was violated because:

The persons responsible for safety (safety administrator, site superintendents, and foreman) were not able to identify that the cleats that were supposed to secure the rake form to the hardback form were not being used.

§12-110-2(b)(3) states "Periodic inspection. The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practices, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or persons designated and trained by the employer for the facility's safety and health program."

Location: East side of gymnasium locker room under construction

Date By Which Violation Must be Abated:

08/18/2003

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 306257940
Inspection Dates: 04/14/2003 - 07/17/2003
Issuance Date: 08/13/2003



Citation and Notification of Penalty

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaau, HI 96749

Citation 1 Item 3c Type of Violation: Serious

HAR §12-110-2(b)(4)(C) was violated because:


The persons responsible for safety (safety administrator, site and construction superintendents, and foreman) were not aware of their specific duties with regard to safety; e.g., recognizing failures in safe working practices, recognizing unsafe conditions, and enforcing safety rules through a progressive disciplinary program.

§12-110-2(b)(4)(C) states "The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to: (i) Recognize potential hazards; (ii) Maintain safety and health protection in the work area; and (iii) Reinforce employee training on the nature of potential hazards and required protective measures."

Location: East side of gymnasium locker room under construction

Date By Which Violation Must be Abated:

08/18/2003


NELSON B. BEFITEL
DIRECTOR

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Hawaiian Dredging Construction Co
Inspection Site: 16-714 Volcano Rd, Keaau, HI 96749
Issuance Date: 08/13/2003

Summary of Penalties for Inspection Number 306257940

Citation 1, Serious	= \$ 6,375.00
TOTAL PENALTIES	= \$ 6,375.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.